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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
POUGHKEEPSIE DIVISION

---X	
In re	
	CHAPTER 7
DONNA MARIE FRALEIGH,	**CASE NO. 10-36282 (CGM)**
Debtor.	
---X	
In re BRIAN FRALEIGH,	
Plaintiff,	
-against-	**ADV. PROCEEDING NO. 10-**
DONNA MARIE FRALEIGH,	
Defendant.	
---X	

COMPLAINT UNDER 11 U.S.C. §§ 523(a)(6),
727(a)(2)(A), 727(a)(3), 727(a)(4)(A), 727(a)(5) and 727(a)(6)(A)

BRIAN FRALEIGH, the Plaintiff, by his attorney, ANDREA B. MALIN, respectfully alleges as follows:

JURISDICTION

1. This is an adversary proceeding brought pursuant to Bankruptcy Rules 4007 and 7001 to determine the dischargeability of a debt of the debtor under 11 U.S.C. §§

523(a)(6), 727(a)(2)(A), 727(a)(3), 727(a)(4)(A), 727(a)(5) and 727(a)(6)(A).

2. The Bankruptcy Court has jurisdiction over the subject matter of this adversary proceeding pursuant to 28 U.S.C. §1471. This adversary proceeding is a core Application proceeding pursuant to 28 U.S.C. § 157.

PROCEDURAL HISTORY

3. The plaintiff, BRIAN FRALEIGH, (the "plaintiff") is the ex-spouse of the debtor.

4. On April 30, 2010, DONNA FRALEIGH, the above-captioned debtor/defendant, (the "debtor") filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code.

5. At the time of the filing, the debtor resided with her two (2) teenage daughters and CHRISTOPHER SEKUL ("SEKUL"). The debtor and her children have lived with SEKUL since 2006. The debtor has maintained a relationship with SEKUL since November of 2004 as life partners.

6. On the date the debtor filed her bankruptcy petition, the debtor's monthly income was FIVE THOUSAND EIGHTY-FOUR DOLLARS AND FIFTY-SIX CENTS ($5,084.56); and SEKUL'S monthly income was SIX THOUSAND NINE HUNDRED AND FIFTEEN DOLLARS AND SEVENTY-EIGHT CENTS ($6,915.78). (Annexed hereto as Exhibit "A" are copies of SEKUL'S paycheck stubs).

7. On June 3, 2010, the Chapter 7 Trustee conducted a § 341 Meeting of Creditors. Plaintiff attended this meeting, represented by counsel. (See this Court's Docket).

8. On July 1, 2010, plaintiff filed an Application with this Court for the

purpose of conducting a 2004 Examination of the debtor and a third party, SEKUL. (See this Court's Docket).

9. On July 19, 2010, the debtor and SEKUL filed Objections to the entry of the Order. (See this Court's Docket).

10. On July 27, 2010, this Court held a hearing on the Objections which upon denial of same resulted in the entry of the Order n July 30. (See this Court's Docket).

11. On September 16, 2010, pursuant with this Court's Order, a 2004 Examination of SEKUL was conducted. On September 16, 2010, and September 28, 2010, a 2004 Examination of the debtor was conducted. Prior to the Examinations, the debtor and SEKUL provided various financial documents.

12. On July 7, 2010, this Court entered an Order upon the application of the plaintiff to extend plaintiff's right to file a complaint pursuant to Section 523 and/or 727 up to and including November 1, 2010. (See this Court's Docket).

13. On September 16, 2010, the parties executed a Stipulation further extending the plaintiff's time to file a complaint pursuant to Section 523 and/or 727 up to and including November 1, 2010. This Stipulation was "So Ordered" by this Court. (See this Court's Docket). The Chapter 7 Trustee's time to file a complaint pursuant to Section 727 has also been extended by this Court. (See this Court's Docket).

FACTUAL HISTORY

14. During the parties' marriage, BRIAN FRALEIGH and the debtor resided in their marital residence located at 350 Van Wagner Road, Poughkeepsie, New York.

15. In or about September or October, 2004, due to marital issues the plaintiff

physically separated from the debtor by leaving the families residence.

16. As the debtor and the children were residing in the martial residence at the time of the debtor and plaintiff's separation and divorce, the debtor retained the majority of the families' personal affects. At the time the plaintiff left the martial residence, it was fully furnished and there existed several valuable antiques which had been acquired by the parties. When the debtor moved in with SEKUL, she moved all of her property to the parties' new residence.

17. In or about November, 2004, debtor met SEKUL. At that time SEKUL resided at 30 Battenfeld Road Milan, New York 12571, which he owned with his then ex-partner. In 2006, the debtor and her children moved to this property with SEKUL.

18. On January 4, 2007, the debtor and plaintiff were divorced and a Judgment of Divorce was entered by the Dutchess County Supreme Court. Annexed hereto as Exhibit "B" is a copy of the debtor and plaintiff's Judgment and the Settlement Agreement incorporated therein.

19. Pursuant to the Judgment of Divorce, amongst other things, the plaintiff was required to pay the debt incurred on this credit card and the statements were to be forwarded to him, by the debtor. At the time of the entry of the Judgment of Divorce, the Macy's card balance was in the sum of ONE HUNDRED AND FORTY DOLLARS ($140.00).

20. Pursuant to the Macy's credit card statement, debtor did not forward same to plaintiff, but instead debtor changed the primary billing contact information for the Macy's credit card several times during 2006 through 2008 to her primary billing address located at 6 High Acres Drive Poughkeepsie, New York 12603 (plaintiff's parent's residence) and then to

2101 Route 9, Germantown, New York 12526 (debtor's former residence). Annexed hereto as Exhibit "M" is a copy of the Macy's credit card statements indicating the changes to the address.

21. The debtor did not satisfy the credit card obligation.

22. Pursuant to the debtor and plaintiff's Judgment of Divorce, the debtor and plaintiff's marital residence was sold and the parties split the proceeds. On or about May 18, 2007, the debtor received total proceeds in the sum of THIRTY-TWO THOUSAND NINE HUNDRED AND THIRTY-ONE DOLLARS AND EIGHTY-EIGHT CENTS ($32, 931.88). Of funds received by the debtor, the debtor paid at closing to her matrimonial attorney Kathryn Lazar, Esq. the sum of NINE THOUSAND THREE HUNDRED NINE DOLLARS AND TWENTY-EIGHT CENTS ($ 9, 309.28). Annexed hereto is Exhibit "C" is a copy of the Closing Statement.

23. Upon review of debtor's financial documents that the majority of the proceeds received from the debtor from the house sale were invested in the improvement of her and SEKUL's.

24. In or about September, 2006, the home in which the debtor, debtor's children and SEKUL resided was destroyed by fire.

25. Thereafter, SEKUL filed a claim against the homeowner's insurance for the structural loss and the loss his, the debtor's and the children's personal effects. The claim for the loss of personal affects was in the sum of ONE HUNDRED FORTY-ONE THOUSAND DOLLARS ($141,000.00). Annexed hereto as Exhibit "D" is a copy of the insurance claim filed by the debtor and SEKUL.

26. Although the parties claimed to have suffered such a substantial loss

in the fire, the debtor testified at her 2004 Examination that the house was sparsely furnished as the parties were busy painting and refinishing the home to upgrade same. As such, they had stored the majority of the families' belongings in a large unattached garage. This garage was not affected by the fire. Thus, in actuality, when the home was destroyed by fire, the parties' suffered a minimal loss of their personal affects.

27. Although the debtor testified at the 2004 Examination that she lost nothing in the fire, as she had "nothing," SEKUL testified that the debtor did experience a loss for which he had partially compensated her with insurance proceeds.

28. As of the date of the fire, the parties have substantially improved the residence. The debtor and SEKUL have added a second floor, added substantial square footage of living space, and have otherwise upgraded the style of the house. As these improvements cost much more than what was allotted to the parties by the insurance company, the debtor commenced incurring these improvements through the use of her credit cards and personal loans.

29. Additionally, the debtor and SEKUL obtained a line of credit from Hudson Valley Federal Credit Union for the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) for the sole purpose of continuing to improve the residence. The debtor and SEKUL have remained current on this loan and continue to use same for improvement of the house.

30. A review of the debtor's credit card use over this period of time, reveals that the purchases made thereon funded rebuilding of the home and refurnishing same.

31. Throughout this time, the debtor has and continues to invest substantial personal funds into improving the home, including but not limited to the payment of several

contractors, such as issuing a check to Carriage Light Inc., in the sum of FOUR THOUSAND DOLLARS ($4,000.00). Annexed hereto as Exhibit "E" is a copy of the checks for FOUR THOUSAND ($4,000.00) written by debtor for construction work on said residence.

32. On June 3, 2010, debtor was present for her 341 Meeting of Creditors, held by the Chapter 7 Trustee. The debtor testified at her 341 Meeting of Creditors that she had no interest in the realty in which she has so heavily invested; rather debtor testified that she was a renter of SEKUL's and she pays SEKUL the sum of EIGHT HUNDRED FORTY DOLLARS ($840.00) per month for rent. Notwithstanding, debtor's testimony, there exists no rental agreement between the parties.

33. Documentation obtained pursuant to the 2004 Order produced canceled checks written by the debtor to SEKUL, in which the debtor had written "½ Mortgage" in the Memo line of the check. Annexed hereto as Exhibit "F" are copies of these checks.

34. Moreover, debtor executed under penalty of perjury schedules indicating that the debtor was paying the parties' household expenses, including the electricity, heat, telephone, cable and internet. The B22 Form filed by the debtor, states that the debtor receives no third party contribution toward the parties' household expenses. At the 341 Meeting, the debtor affirmed before the Chapter 7 Trustee that all of her schedules filed with the petition were true and accurate. She also stated that she received no third party contribution toward the household expenses.

35. On June 4, 2009, plaintiff filed a proceeding with the Dutchess County Family Court seeking to obtain a downward modification of his child support obligation. As part

of this proceeding the parties are required to file a sworn statement setting forth their monthly expenses and income with the Court. The debtor partially complied with this requirement by filing an unsworn statement with the Court. This financial statement also stated that debtor did not receive any third party contribution toward her and the children's household and daily expenses. Annexed hereto as Exhibit "G" is a copy of the Networth Statement filed with the Dutchess County Family Court.

36. During the 2004 Examination of SEKUL, he testified that not only did he contribute to the monthly expenses of the household, he paid a sum greater than the sum paid by the debtor. Additionally, he stated in his Objection to the 2004 Request filed with this Court, that he supported the debtor's children, as she could not afford to do so. Annexed hereto as Exhibit "H" is a copy of the Objection.

37. It was not until after this Court denied SEKUL'S Objection to the entry of the 2004 Examination Order, as this Court found that the parties were commingling their funds and assets, that the debtor on August 16, 2010, filed an amended financial statement with the Dutchess County Family Court. The amended statement sets forth an amount of third party contribution from SEKUL in the net sum of $586.00 per month. This statement was sworn to by the debtor and notarized. Annexed hereto as Exhibit "G" is a copy of the amended financial statement with the Dutchess County Family Court.

38. The debtor testified at the 2004 Examination that all her monthly household bills were paid by her via her debit card, checks or her credit cards. Pursuant to a thorough review of the bank printouts of debtor's checking account as of 2006, debtor was not making any or very little contributions to the payment of the household expenses. For the most

part, the statements reflect that the debtor's income was used for entertainment, rebuilding the house or her personal expenses for meals out, clothes and entertainment.

39. To date, the debtor has failed and refused to amend her B22 Form or Schedule I demonstrating the monthly contribution she has been receiving from SEKUL since 2006. Annexed hereto as Exhibit "I" is a copy of the Amended Statement.

40. In 2006, pursuant to both debtor's and SEKUL's testimony at the 2004 Examination, the parties purchased a 2006 Bayliner boat (the "boat" or "Bayliner") for the sum of FORTY THOUSAND DOLLARS ($40,000.00). The parties choose the boat together, executed the purchase agreement and cosigned the promissory note with Hudson Valley Federal Credit Union to enable them to purchase the boat and have made payments on the boat. Both of the parties are certified to operate the boat on public waters and both parties have equal access to the boat. However, debtor claims that she has no interest in the boat as same is titled to SEKUL. The debtor claims that it is evident that she does not have an ownership interest in the boat, as she directed the loan representative at the Hudson Valley Federal Credit Union to cross her name off the loan application for same. Annexed hereto as EXHIBIT "J" is a copy of the debtor and SEKUL'S loan with Hudson Valley Federal Credit Union for a sum of FORTY THOUSAND DOLLARS ($40,000.00) for the Bayliner, a copy of the Certificate of Title for the Bayliner and a copy of the insurance policy for the Bayliner.

41. As debtor claims she has no interest in the boat, same was not listed on Schedule B filed with the debtor's petition.

42. In or about 2006, the debtor purchased a hot tub for the sum of approximately SIX THOUSAND ONE HUNDRED AND NINETY-TWO DOLLARS

($6,192.00). She testified at the 2004 Examination that she gave same to SEKUL as a gift, along with any and all equity in the boat.

43. In or about 2006, the debtor's financial documents demonstrated that she purchased furniture from Raymor and Flannigan for the sum of TWELVE THOUSAND DOLLARS ($12,000.00) which she gave to SEKUL. Debtor advised that SEKUL paid her for this furniture, but has produced no documentary or other evidence to support the assertion. Annexed hereto as Exhibit "K" is a copy of the Raymor and Flannigan Statement of purchase.

44. Pursuant to the Judgment of Divorce with plaintiff, the debtor was awarded the plaintiff and debtor's Timeshare. The debtor testified at the 2004 Examination that she maintains the timeshare and has regularly used same. The debtor owns the time share free and clear. However, the debtor failed to list this asset on her petition. To date, the petition has not been amended to include same.

45. The debtor is the owner of two (2) whole life insurance policies with substantial cash surrender value. One of the policies insures her life, the other the plaintiff's life. Neither policy was listed on Schedule B filed with the debtor's petition. To date, same has not been amended to include same. Annexed hereto as Exhibit "L" is a copy of debtor's life insurance policies.

46. Pursuant to the 2004 Order of this Court, the debtor was to provide certain financial documents so as to enable the creditor to determine the debtor's financial situation as of the date of the filing. The debtor failed to provide the following documents pursuant to this Court's Order:

1) a copy of the retail installment agreement for the parties boat;

2) a fully executed copy of the debtor's income tax returns from the tax years of 2006 through 2009; and

3) her bank statements (instead she produced a bank printout which does not provide the clarity of a statement.

AS AND FOR A FIRST CAUSE OF ACTION

47. Plaintiff re-alleges and restates the allegations contained in paragraphs 1 through .

48. As stated, plaintiff previously held a credit card account with Macy's, in which Plaintiff's name appeared on the face of the credit card. Debtor's name did not appear on the face of the credit card, but debtor was listed as an authorized user.

49. Pursuant to the Judgment of Divorce, the plaintiff was required to pay the debt incurred on this credit card and the statements were to be forwarded to him, by the debtor. At the time of the entry of the Judgment of Divorce, the Macy's card balance was in the sum of ONE HUNDRED AND FORTY DOLLARS ($140.00).

50. Pursuant to the Macy's credit card statement, debtor did not forward same to plaintiff, but instead debtor changed the primary billing contact information for the Macy's credit card several times during 2006 through 2008 to her primary billing address located at 6 High Acres Drive Poughkeepsie, New York 12603 (plaintiff's parent's residence) and then to 2101 Route 9, Germantown, New York 12526 (debtor's former residence). Annexed hereto as Exhibit "M" is a copy of the Macy's credit card statements indicating the changes to the address.

51. The debtor did not satisfy the credit card obligation.

52. Pursuant to 11 U.S.C. §523(a)(6), a debtor does not receive a discharge

from a debt for willful and malicious injury by a debtor to another entity or to the property of another entity.

53. The debtor knew that if she concealed the Macy's billing statement from the plaintiff the balance on the plaintiff's Macy card would remain unpaid and continue to cause harm to plaintiff's credit score.

54. Th debtor admitted that she intentionally changed the address for the Macy's card billing statements with the knowledge that plaintiff would not receive same. Furthermore, the debtor testified that she intentionally changed the address of the Macy's card so that the billing statements would be sent to 6 High Acres Drive and that she had done so knowing that the plaintiff did not live at 6 High Acres Drive.

55. The debtor concealed the card with the actual intent to cause plaintiff harm by seeking to ruin plaintiff's credit.

56. Due to debtor's intentional concealment of the credit card debts, plaintiff's credit has been damaged.

57. Accordingly, the debt owed to plaintiff arising herein should be declared non-dischargeable pursuant to 11 U.S.C. Section 523(a)(6).

AS AND FOR A SECOND CAUSE OF ACTION

58. Plaintiff re-alleges and restates the allegations contained in paragraphs 1 through 57.

59. Upon information and belief, the debtor is the owner of many valuable assets not set forth in her schedules, included but not limited to, an interest in the insurance claims made by SEKUL against his homeowner's insurance, a 2006 Bayliner Boat, 2 whole life

insurance policies, a vacation time share, a hot tub and her interest in the residence in which she resides with SEKUL and her children.

60. Debtor intentionally and knowingly failed to list her interest in said assets on Schedule B of her schedules to her petition in an effort to conceal same from this Court, her creditor's and the Chapter 7 Trustee.

61. Accordingly, pursuant to 11 U.S.C. §727(a)(2)(A), the debtor should be denied her discharge.

AS AND FOR A THIRD CAUSE OF ACTION

62. Plaintiff re-alleges and restates the allegations contained in paragraphs 1 through 61.

63. Upon information and belief, the debtor has unjustifiably concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor financial condition or business transactions might be ascertained.

64. Debtor has failed to maintain:

1) a copy of the retail installment agreement for the parties' boat;
2) a fully executed copy of the debtor's income tax returns from the tax years of 2006 through 2009; and
3) bank statements.

65. Accordingly, pursuant to 11 U.S.C. §727(a)(3), the debtor should be denied her discharge for failure to maintain, or fail to keep or preserve sufficient recorded information, including books, documents, records, and papers, from which the debtor's financial

condition might be ascertained.

AS AND FOR A FOURTH CAUSE OF ACTION

66. Plaintiff re-alleges and restates the allegations contained in paragraphs 1 through 65.

67. The debtor knowingly and fraudulently, in or in connection with the case made a false oath or account, in that:

(I). The debtor failed to list on her schedules filed with this Court her interest in the insurance claims made by SEKUL against his homeowner's insurance, a 2006 Bayliner Boat, 2 whole life insurance policies, a vacation time share, a hot tub and her interest in the residence in which she resides with SEKUL and her children ; and

(ii). the debtor falsified the Form B22 Statement filed with her petition by failing to disclose to the Court, her creditors and the Chapter 7 Trustee the third party income she and her children regularly receive for their monthly support from SEKUL.

68. Accordingly, the schedules and Form B22 filed by the debtor are fraudulent.

69. The debtor filed the schedules and the Form B22 knowing same were false.

70. The debtor signed a declaration under penalty of perjury stating that the schedules filed and the Form B22 were true and correct to the best of her knowledge, information and belief. Furthermore, the debtor testified to same under oath at the debtor's 341 Meeting of Creditors.

71. The debtor has made a false oath.

72. Accordingly, pursuant to 11 U.S.C. §727(a)(4)(A), the debtor should be denied her discharge.

AS AND FOR A FIFTH CAUSE OF ACTION

73. Plaintiff re-alleges and restates the allegations contained in paragraphs 1 through 72.

74. The debtor has failed to satisfactorily to explain any loss of assets or deficiency of assets to meet the debtor's liabilities, in that, the debtor failed to adequately explain what she did with the substantial net proceeds she received upon the sale of her marital residence.

75. Debtor has failed to explain why her monthly gross income is insufficient to satisfy her liabilities when SEKUL is paying greater than ½ of her family's monthly expenses.

76. Accordingly, pursuant to 11 U.S.C. §727(a)(5), the debtor should be denied her discharge.

AS AND FOR A SIXTH CAUSE OF ACTION

77. Plaintiff re-alleges and restates the allegations contained in paragraphs 1 through 76.

78. On July 30, 2010 an Order for a 2004 Examination of debtor was entered by this Court.

79. Pursuant to this Court's 2004 Examination Order, the debtor was required to provide plaintiff with certain financial documents specified in said Order.

80. Debtor failed to follow this Court's Order and provide the following information:

1) a copy of the retail installment agreement for the parties' boat;

2) a fully executed copy of the debtor's income tax returns from the tax years of 2006 through 2009; and

3) bank statements.

81. Pursuant to § 727(a)(6)(A), a debtor that has refused, in the case to obey any lawful Order of the Court, shall not be granted a discharge.

82. Accordingly, pursuant to 11 U.S.C. §727(a)(6)(A), the debtor should be denied her discharge.

WHEREFORE, plaintiff requests entry of a judgment against the debtor as follows:

1. On the first cause of action, the entry of an Order declaring the debt owed to plaintiff, is non-dischargeable pursuant to 11 U.S.C. §523(a)(6);

2. On the second cause of action, the entry of an Order declaring the debt owed to plaintiff is non-dischargeable pursuant to 11 U.S.C. §727(a)(2)(A);

3. On the third cause of action, the entry of an Order denying the debtor her discharge pursuant to 11 U.S.C. §727(a)(3);

4. On the fourth cause of action, the entry of an Order denying the debtor her discharge pursuant to 11 U.S.C. §727(a)(4)(A);

5. On the fifth cause of action, the entry of an Order denying the debtor her discharge pursuant to 11 U.S.C. §727(a)(5); and

6. On the sixth cause of action, the entry of an Order denying the debtor her discharge pursuant to 11 U.S.C. §727(a)(6)(A).

7. Granting plaintiff such other and further relief as to this Court may seem just and proper.

Dated: Wappingers Falls, New York
October 29, 2010

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